

BEFORE THE DIVISION OF WATER RESOURCES
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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In the Matter of Application 6791 of William F. Bickel to appropriate from Goodyear Creek Tributary to North Fork Yuba River in Sierra County for Mining and Domestic Purposes.

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DECISION A. 6791 D- 331

Decided *October 3, 1932*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, SEPTEMBER 12, 1932

For Applicant

William F. Bickel

Henry Conlin

For Protestant

W. L. Erwin

No appearance

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer,
for Harold Conkling, Deputy in Charge of Water Rights,
Division of Water Resources, Department of Public Works,
State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 6791 was filed by William F. Bickel on September 12, 1930. It proposes an appropriation of 25 cubic feet per second by direct diversion throughout the year from Goodyear Creek, a tributary of the North Fork of the Yuba River, in Sierra County, for mining and domestic purposes at the Associated Placers and Eureka Mine within $W\frac{1}{2}$ of Section 17, T 20 N, R 10 E, M.D.B. & M. The water will be diverted at a point within the $NW\frac{1}{4}$ $NW\frac{1}{4}$ Section 9, T 20 N, R 10 E, M.D.B. & M., and after use for mining purposes will

be returned to Goodyear Creek at points between the north line of NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 to the south line of NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T 20 N, R 10 E, M.D.B. & M. The application states that the water which is to be used for hydraulic mining will be polluted with mud but not with chemicals.

The application was protested by W. L. Erwin.

PROTEST

W. L. Erwin claims a controlling interest in the California Placer Mines and an option to purchase the Hilo or Associated Placer Mines with ditches and water rights. He alleges in effect that the waters of Goodyear Creek have been used on these properties by owners and lessors for the last 50 years and that the appropriation if allowed would interfere with his prior vested rights to use water through the Hilo Ditch.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF
THE WATER COMMISSION ACT

Application 6791 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on September 12, 1932 at 10:00 A.M., in Room 401, Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified.

NO APPEARANCE ON BEHALF OF PROTESTANT

On the day of the hearing W. L. Erwin, the protestant, informed this office that as he had had no opportunity to see other interested parties and to obtain instructions from them, he was not prepared to proceed with the case and therefore would not be present at the hearing. Consequently the applicant only was represented.

HISTORY

It appears from information on file with this office and testimony presented at the hearing that the so-called Hilo Mining Property located within the place of use designated in Application 6791 was abandoned prior to 1922. In 1922, F. P. Morrill, M. Morrill, F. M. Davis (formerly known as F. M. Morrill) and F. B. Seward relocated this claim under the name of Associated Placers, with the understanding that they had acquired all the prior water rights connected therewith. The assessment work was kept up and F. P. Morrill entered into a contract of sale with William F. Bickel under which their locator's right and interest, together with all the improvements, would be transferred to Mr. Bickel. This contract of sale was secured by a deed to the property dated July 28, 1930, executed, and placed in escrow.

After the contract was executed Mr. Bickel learned that Morrill and Associates had no valid water right although they had been assessed therefor and had been paying taxes thereon. Morrill and Associates then wished to rescind the contract, to which Mr. Bickel would not agree and they were given to understand that they should take the necessary steps to secure a water right or else Mr. Bickel would file with the understanding that the cost of the right would be deducted from the purchase price of the property. It was finally agreed that Mr. Bickel should file and consequently Application 6791 was filed on September 12, 1930.

Shortly after the contract of sale was entered into, Morrill and Associates gave one Chas. E. Herron an option to purchase the property and Herron filed Application 6675 which was essentially identical with the later application now before us. Herron claimed the place of use by virtue of a lease and bond on the land. Application 6675 of Chas. E. Herron was cancelled by this office on June 9, 1931 for failure to complete.

Morrill, et al., then gave W. L. Erwin, the protestant, a lease and bond on the mining claim and apparently Erwin in part bases his protest on the lease thus acquired.

UNAPPROPRIATED WATER IN GOODYEAR CREEK

The testimony presented at the hearing indicated that the water which applicant proposes to appropriate was abandoned prior to 1922 and since then has not been appropriated. It was used for a short time by Herron, apparently under no color of right at the Eureka Mine which now belongs to the applicant but with this exception has flowed continuously past the proposed point of diversion and on down past the proposed point of return. There being no appearance on the part of the protestant the testimony presented at the hearing remains unrefuted.

CONCLUSION

The uses to which the applicant proposes to put the water are beneficial ones, the place of use is apparently controlled by the applicant and there is unappropriated water available at the proposed point of diversion. It is therefore our opinion that Application 6791 be approved.

ORDER

Application 6791 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises,

IT IS HEREBY ORDERED that said Application 6791 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate.

Witness my hand and the seal of the Department of Public Works of
the State of California, this *3rd* day of *October*, 1932.

EDWARD HYATT, State Engineer

By *Harold Conkling*
Deputy

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